

### **Remarks**

Claims 1-11 were pending in this application. By this amendment, claims 1, 5 and 8-11 are amended. These claim amendments are fully supported by the application, including the claims as originally filed (for example, see paragraph [16]; paragraph [17]; paragraph [023]; and pages 9-11, Examples 2-4). Claim 12 is new. Newly added claim 12 is fully supported by the specification as originally filed, including paragraph [023] and pages 9-11, Examples 2-4.

After entry of this amendment, **claims 1-12 are pending in the application**. No new matter is added by this amendment. Applicants expressly reserve the right to pursue protection of any subject matter removed from the claims by this amendment.

Entry of the amendments after final action is appropriate because the amendments are believed to place the claims in a condition for allowance. By this amendment, all pending claims are explicitly specific for culture *Muscodor vitigenus* 2116.

#### *Rejections under 35 U.S.C. § 112, first paragraph – Deposit Information*

Claims 1-11 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly not being enabled.

In accordance with the Examiner's suggestion, Applicants have amended the specification (paragraph [018]) to include a statement indicating the public availability of *M. vitigenus* 2116. Applicants believe the amendment obviates the pending rejection and request it to be removed.

#### *Rejections under 35 U.S.C. § 112, first paragraph – New Matter*

Claims 10 and 11 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the range of 5 ng hr<sup>-1</sup> to about 15 ng hr<sup>-1</sup> is asserted as being insufficiently described in the disclosure as filed because the stated upper limit of about 15 ng hr<sup>-1</sup> is not clearly described in the specification. In the interest of expediting prosecution, claim 10 has been amended to recite the range of about 5 ng hr<sup>-1</sup> to about 150 ng hr<sup>-1</sup>, which is clearly described in the specification (see, for example, paragraph [023]).

It is believed that the alleged insufficient written description for claim 10 has been obviated or rendered moot by the amendment filed herewith, and Applicants request that the rejection under §112, first paragraph, be withdrawn.

*Rejections under 35 U.S.C. § 112, second paragraph*

Claims 1-9 and 11 have been rejected as indefinite under 35 U.S.C. § 112, second paragraph. Specifically, the claims are deemed to be indefinite for use of the term “substantially.” Claim 1 has been amended to remove this term.

Claim 11 is alleged to be vague for the recitation of “naphthalene derivative.” Claim 11 has been amended to clarify that the naphthalene derivative is “2-methyl naphthalene and/or 1-methoxy naphthalene.” Support for this amendment can be found throughout the specification as originally filed, including paragraph [022] and Example 2.

It is believed that the alleged indefiniteness of each of the rejected claims has been obviated or rendered moot by the amendments filed herewith, and Applicants request that each of the rejections under §112, second paragraph, be withdrawn.

*Rejections under 35 U.S.C. § 103(a)*

Claims 1-11 remain rejected under 35 U.S.C. § 103(a) as allegedly obvious over Strobel *et al.* (US Patent No. 6,911,338 B2). Applicants traverse these rejections.

As noted by the Office, these rejections are to claims that are directed to *Muscodor vitigenus* and variants thereof. By this amendment, this language has been removed from all pending claims, which now refer to *Muscodor vitigenus* 2116. Strobel *et al.* do not teach, suggest, or disclose an isolated culture of *Muscodor vitigenus* 2116. Strobel *et al.* disclose two specific strains of two specific species (*Muscodor albus* 620 and *Muscodor roseus* A3-5), neither of which is currently claimed. Thus, the amended claims are free of the prior art of record, and believed to be allowable.

In addition, Applicants apologize for the inclusion of a typographical error on page 5, line 1 in the Response submitted on August 18, 2006. The word “not” was omitted prior to the word “have” in the statement “it would have been obvious to modify Strobel to arrive at the invention of claim 1.” As such, this statement was not an admission to a finding of obviousness. The statement in the August 18 response was intended to read “it would not have been obvious to modify Strobel to arrive at the invention of claim 1” and Applicants request that this be reflected in the record.

In view of the amendments and arguments made herein, Applicants request reconsideration and withdrawal of the rejections based on the cited reference.

*Double Patenting Rejection*

Claims 1-11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,911,338. It is alleged that the conflicting claims are not patentably distinct from each other. By this amendment, all pending claims explicitly refer to *Muscodor vitigenus* 2116. Applicants believe that this rejection is overcome by this amendment, because *Muscodor vitigenus* 2116 is not taught, suggested or disclosed in claims 1-5 of U.S. Patent No. 6,911,338. As such, Applicants respectfully request the withdrawal of the nonstatutory obviousness-type double patenting rejection.

*New Claim 12 is Patentable*

Claim 12 depends directly from claim 10 and incorporates all of the limitations of claim 10. Thus, claim 12 is patentable over Strobel *et al.* at least for the reasons stated above relating to claim 10.

**Conclusion**

Applicants respectfully submit that the claims filed herewith are in condition for allowance. If any issues remain, the Examiner is requested to contact the undersigned to arrange a telephonic interview prior to the preparation of an Advisory Action.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 595-5301

By /Karri Kuenzli Bradley/  
Karri Kuenzli Bradley, Ph.D.  
Registration No. 56,300